

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #94-11**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of sales and use tax to items of tangible personal property manufactured and distributed by [THE TAXPAYER].

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department, but applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in his transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[THE TAXPAYER] manufactures and distributes the following items of tangible personal property:

- (1) Kidney dialysis machines and associated parts and supplies;

- (2) Cardiovascular heart lung machines, oxygenators and supplies related thereto.

ISSUE

Whether the items of tangible personal property listed in the facts are subject to sales or use tax.

RULING

- (1) Kidney dialysis machines are exempt.
- (2) Oxygenators are exempt. Cardiovascular heart lung machines are exempt.

ANALYSIS

(1) The taxpayer believes that kidney dialysis machines and associated parts and supplies are tax exempt “prosthetics.” T.C.A. § 67-6-314(5) specifically provides for an exemption from the sales tax for the sale of prosthetics.

The Supreme Court of Tennessee has ruled that “prosthetics”, as used in T.C.A. § 67-6-314(5), is not limited to devices which substitute for a missing part of the body but also includes devices which substitute for the diminished functioning of a bodily part. *Cordis Corp. v. Taylor*, 762 S.W.2d 138. Put another way, a device is prosthetic if, “it is an artificial part and it . . . augments the performance of a natural function.” *Cordis* at 139.

Under the expansive view adopted by the court in *Cordis*, a kidney dialysis machines is a prosthetic within the meaning of the term as used in T.C.A. § 67-6-314(5). The kidney dialysis machine is an artificial part which augments the natural functioning of the kidneys.

(2) The taxpayer contends that cardiovascular heart lung machines, oxygenators and supplies related thereto are tax exempt under T.C.A. § 67-6-318 which provides an exemption for, “any oxygen prescribed or recommended for the medical treatment of a human being by a licensed practitioner of the healing arts, and equipment necessary to administer such oxygen.”

The test is whether the equipment is used to put oxygen into the body. The oxygenators, which filter out waste from the blood and replenish the blood with oxygen, appear necessary to administer oxygen into the body and are therefore exempt.

Cardiovascular heart lung machines also qualify under this exemption if the function which they perform, circulating the blood through an oxygenator and back into the patient, is necessary for the operation of the oxygenator which administers the oxygen. Independent of whether the heart lung machines are exempt under § 318, the machines are exempt under § 314(5) as prosthetics because heart lung machines substitute for the functioning of body parts.

Steve Thomas, Deputy General Counsel

APPROVED: Joe Huddleston

DATE: 5-31-94